IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 346 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

YAKUBBHAI IBRAHIM KALANDER @ UBHA

Appearance:

MR KP RAVAL, APP, for Petitioner

MR MA KHARADI for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 07/03/2000

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution of India though styled as one under Articles 226 and 227 of the Constitution of India, challenging the judgement and order of the Sessions Judge, Panchmahls at Godhra in Criminal Appeal No.62/98. It may be pointed out that the petition under Article 227 of the

Constitution of India was necessary only because no further appeal from an order passed in appeal by the Sessions Court would lie.

2. Before proceeding further on the merits of the matter it is desirable to keep in mind the observations of the Supreme Court in the case of Mohmmad Yunus Vs. Mohammad Mustaqim (AIR 1984 SC 38) and Khali Ahmed Bashir Vs. Tufelhussein S. Sarangpurwala (AIR 1988 SC 184), on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the aforesaid two cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected.

3. The case of the petitioner was that the Deputy Conservator of Forests, Godhra had received some information on 3rd October 1998 that a truck loaded with fresh cut teak logs was to pass from village Mora and that therefore a watch was set up with the help of staff members as well as police near the said village. A maruti car was found to be moving suspiciously around the said village. The respondent (original accused) is alleged to have been found standing near that maruti car with an open sword in his hand along with 8 or 10 other persons and that when they were identified by the forest officers, the latter were attacked by the said accused. The respondent was deprived of the said sword who, however, continued to give abuses to the forest officers. It is the case of the petitioner that the respondent was then taken to a nearby place where teak logs were being loaded in a truck. The labourers ran away and the driver who was waiting there was interrogated. Muddamal such as axes, saw-blade, etc. were seized along with the truck and the maruti car, and an offence was registered under the provisions of section 42(2)B and section 52 of the Indian Forests Act as Morva Crime Register No.49/98-99.

4. After necessary procedural formalities, a show-cause notice was issued to the respondent, owner of the truck, as to why the same should not be confiscated under section 60(1)(B)(i) of the said Act. The respondent replied to the said show-cause notice and explained that the truck was hired by one Manubhai Rabari of village Mora and that he (the owner of the truck) did not know that it would be used to carry or transport teak

logs. We are not concerned with the maruti car since it was not subjected to any order of confiscation. The respondent owner of the truck set out in details in his reply to the show-cause notice that the teak wood belonged to the hirer viz. Manubhai Desai of village Mora, that the same were cut from the land belonging to the said Manubhai Desai and that too for household purpose, and in fact the truck had not been used for transportation of any forest produce.

5. However, the Deputy Conservator of Forests was pleased to order confiscation in respect of the truck in question, while releasing the maruti car.

6. The respondent-owner of the truck thereupon preferred an appeal under section 61-D(1) of the Indian Forests Act, as amended (by Gujarat), before the Sessions Judge, who by the impugned judgement and order was pleased to allow the appeal, set aside the order of confiscation and directed the release of the truck in question.

7. The impugned judgement and order quashing and setting aside the order of confiscation, is based on two principal considerations. Confiscation of a vehicle used for transportation of forest produce in contravention of the statute would be justified only if the vehicles in question was in fact put to "actual use" for the purpose of transportation. I have no doubt in my mind that a vehicle when it is put to actual use for the purpose of transportation of goods would necessarily be a vehicle which is moving or about to move so as to constitute transportation. A vehicle as found on the facts of the case, which is merely being loaded, which was in fact found only partly loaded and admittedly other logs including old teak looks were lying near the vehicle for the purpose of being loaded on the vehicle, cannot be construed as a vehicle put to "actual use". This is also the view taken by the High Court in the case of Manubhai Vs. Deputy Conservator of Forest, reported at 26(2) GLR 836.

8. The next major consideration which weighed with the Sessions Judge was that teak logs which were being loaded on the truck were not the property of the government, that it was private property and that therefore the order of confiscation in respect of the truck was illegal.

9. The learned Sessions Judge, after considering in detail section 61-A(1) found, and in my opinion found

correctly, that the power of confiscation could arise "where a forest offence is believed to have been committed in respect of any forest produce which is the property of the State Government ..." Even sub-section (2) of section 61-A refers to forest produce which is a subject of seizure under sub-section (1) of section 52, "which is the property of the State Government ..." It is obvious that the power of confiscation under section 61-A arises only where the forest produce is the property of the State Government.

10. On the facts of the case there is absolutely no controversy that the logs in question were of the ownership of the owner of the field in which they were found viz. of Manubhai Desai of village Mora. There is not the slightest suggestion in any of the two proceedings that the said logs were of government ownership.

11. In this context learned counsel for the petitioner sought to rely upon section 69 of the Indian Forests Act to show that the presumption can be drawn that the relevant forest produce is a property of the government until the contrary is proved. However, a plain reading of section 69 indicates that the presumption can be applied only where "a question arises as to whether any forest produce is the property of the government ...". Thus, there must be at least on a prima facie basis some controversy that the forest produce in question may belong to the government. The Government may merely assert that it is government property, and shift the burden of proof on a person who pleads to the contrary. However, on the facts of the case where there is absolutely no controversy that the teak logs were of private ownership, and the government has not even suggested or hinted that it is a government property, I fail to understand how the question of presumption would arise at all.

12. Learned counsel for the petitioner then sought to rely upon section 55 of the Indian Forests Act (as amended by Gujarat), which obviously applies to timber or forest produce which is not the property of the government. On the basis of section 55 learned counsel for the petitioner submitted that even where the timber is not the property of the government, and in respect of which a forest offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence shall be liable to confiscation. There cannot be any controversy as to the application of the said provision to timber which is not the property of the

government. However, even on a plain reading of section 55 it becomes obvious that the vehicles used for transportation of such timber become liable to confiscation, only where "in respect of which a forest offence has been committed". Thus, even in case of timber which is not the property of the government, if at all the forest offence has been committed, the concerned offender must be charged and convicted, and only there after shall the vehicle used in transportation of such goods become liable to confiscation. This view is further fortified by the provisions of sub-section 2 which states that such confiscation may be in addition to any other punishment prescribed for such offence. Thus, unless a forest offence in respect of such timber has been made out, and established, such vehicle is not liable for confiscation.

13. On the facts of the case there is not the slightest indication that the respondent owner of the truck was ever charged let alone convicted of having committed any forest offence. Under the circumstances the truck in question was not liable to confiscation as rightly found by the Sessions Judge.

14. In the premises aforesaid I find that there is no substance in the present petition and the same is, therefore, dismissed. Rule is discharged. Interim relief stands vacated.

****

ar